IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 337.

CITY OF NEW ORLEANS, APPELLANT,

vs.

ALPHONSE EMSHEIMER, APPELLEE.

Brief for Appellant on Motion to Dismiss.

In the circuit court appellant demurred to the bill of complainant on two grounds:

First. That there was no jurisdiction in the circuit court, the averments of the bill not disclosing such diverse citizenship of the parties as would make the cause cognizable in a Federal court.

Second. That the bill disclosed no equity.

The first ground of demurrer was overruled; the second maintained, without prejudice of complainant to bring a subsequent action at law. The case was by appeal carried by complainant to the circuit court of appeals to obtain a review of the judgment, so far as it dismissed the bill. The defendant, by a special appeal, confined to that part of the court's decree which overruled the demurrer setting up want of jurisdiction in the circuit court by reason of the character of the parties, has brought that part of the decree of the court below to this court for review.

The motion to dismiss is upon the single ground that defendant cannot appeal from a decree which is in its favor.

Defendant conceives its right to appeal from, and have reviewed by this court, so much of the decree of the lower court as refused to sustain its demurrer to the jurisdiction of the circuit court by reason of the character of the parties is fully sustained by United States *vs.* Jahn, 155 U. S., 109, and the decisions of this court by which the rules announced in that case have been followed and applied.

The decree of the circuit court does not dismiss the bill absolutely, as it would have done had the first ground of defendant's demurrer been maintained. In such event the suit would have been dismissed without any reserved right to renew it in any other form. The circuit court finds that it had jurisdiction to entertain the suit exploited by the bill between plaintiff and defendant in another form of action. Defendant insists that the bill should have been dismissed as one disclosing a case beyond the jurisdiction of a Federal court.

The party has the right to have a judgment in his favor corrected in any respect as to which he deems himself in-

jured or in respect to which he has been denied his full rights.

U. S. *vs.* Dashiel, 3 Wallace, 701.
Teal *vs.* Russell, 3 Ill., 319.
Hartman *vs.* Belleville, etc., 64 Ill., 24.

The motion to dismiss should be denied.

Respectfully submitted.

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